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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

COMMUNITY FOR CREATIVE NON-VIOLENCE, *et al.*,
Petitioners,

v.

JAMES EARL REID,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF *AMICI CURIAE* OF THE AMERICAN SOCIETY OF MAGAZINE PHOTOGRAPHERS AND THE COPYRIGHT JUSTICE COALITION IN SUPPORT OF THE RESPONDENT

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BRIEF *AMICI CURIAE* OF THE AMERICAN SOCIETY OF MAGAZINE PHOTOGRAPHERS AND THE COPYRIGHT JUSTICE COALITION IN SUPPORT OF THE RESPONDENT

The American Society of Magazine Photographers and The Copyright Justice Coalition submit this brief as *amici curiae* in support of the respondent James Earl Reid. The parties to the case have consented in writing to the filing of this brief in accordance with Rule 36 of the Rules of this Court. Copies of the letters of consent have been filed with the Clerk.

INTEREST OF THE AMICI CURIAE

The American Society of Magazine Photographers ("ASMP") is the largest national organization of professional photographers engaged in the publication of photographs. Most of ASMP's nearly 5,000 members are freelance photographers whose work is produced on a commissioned basis—that is, they are retained by a magazine, advertising agency or corporation only to take photographs for a specific project. They are usually paid a flat fee representing payment for one-time publication rights by magazines or newspapers, or for certain other specified rights by advertising agencies or corporations.

ASMP members are generally not accorded employment benefits. They are not paid a regular salary, do not receive a paid vacation, and must purchase their own cameras and laboratory equipment. They are responsible for all of the overhead expenses associated with running a business, must pay the costs of their own health and liability insurance, and are not eligible to participate in the pension and retirement plans offered to employees of the commissioning parties. Given these responsibilities and limited resources, the entrepreneurial risks assumed by ASMP members when they accept a commissioned project are far greater than those of the publisher or advertising agency in undertaking that project.

These characteristics are also typical of the over 100,000 individual creators represented by The Copyright Justice Coalition ("CJC"), in which ASMP is an active member. The CJC is an *ad hoc* group of 50 organizations whose individual members include most of the freelance creators in the United States, including photographers, designers, visual artists, illustrators, writers, cartoonists, actors, and songwriters.[1] They produce a vast array of commissioned works for the publishing and advertising industries, and for corporations throughout the United States.

After the Copyright Act of 1976 went into effect in 1978, freelance creators represented by ASMP and the CJC experienced a dramatic change in their business relationships with these clients. Before 1978, many publishers and newspapers were satisfied with securing one-time publication rights, and advertising agencies and corporations were content with a limited grant of rights, in exchange for the fee paid for the commissioned work. The explicit authorization of "work made for hire" ("work for hire") agreements in Section 101 of the 1976 Copyright Act, however, resulted in the imposition of non-negotiable work for hire arrangements on freelance photographers and other creators. Under those arrangements, commissioning parties became the "authors" of, and acquired all rights in, the freelancer's work for the duration of the 75- to 100-year copyright term applicable to works for hire. 17 U.S.C. §§ 201(b), 302(c). Generally, however, the compensation paid the freelancer did not increase commensurately. While freelancers continued to receive compensation reflecting only the purchase of limited or one-time publication rights, they relinquished *forever* all rights to all future uses under work for hire agreements.

Although some freelancers have no choice but to sign work for hire agreements in order to survive, many

[1] The member organizations of the CJC are listed in Appendix A to this brief.

established professionals refuse to do so. Forfeiture of all copyright rights under a work for hire agreement threatens freelancers' very ability to earn a living. They rely heavily for basic living expenses on the income-producing potential of their works through reuse fees, creation and distribution of derivative works, and royalty payments from licensing arrangements. Retention of copyright rights and the potential income such rights may generate over many years is the only reliable source of sustained income that many freelancers have. Freelancers are generally willing to assign to publishers or other commissioning parties all rights necessary for those parties to exploit fully the work for the particular use intended. But in order to survive, freelancers must retain all remaining rights to ensure their own ability to benefit financially from future uses of their work.

Freelance creators' freedom to choose whether to engage in a work for hire arrangement has been effectively cut off by the development of case law holding them to be "employees" for copyright purposes, even though they have either refused to sign a work for hire agreement or have never been given the opportunity to negotiate the terms of such an agreement. Freelancers who struggle daily with the burdens of being self-employed are appalled when they are subsequently categorized as "employees," although they have received no employment benefits and, in fact, have operated as independent contractors. They are outraged to be faced with the prospect of losing all rights in their works *even when they have exercised their statutory right to refuse to sign a work for hire agreement.*

The working relationship between freelancers and commissioning parties often entails substantial interaction between them; indeed, such interaction may be necessary to ensure the project's success. Under petitioners' interpretation of the statute, however, that interaction penalizes freelancers by placing them in an impossible situation: they either must agree to a work for hire arrangement and try to negotiate a fee that accu-

rately predicts the full value of all rights in the work, or receive only a one-time usage fee and risk losing all rights to future uses by later being treated as an "employee." The gross inequity of this Hobson's choice prompted the involvement of ASMP and the CJC in this litigation in the court of appeals and before this Court.

SUMMARY OF ARGUMENT

Twenty-four years ago, after hard-fought negotiations brokered by the Copyright Office in the context of drafting a new copyright law, representatives of freelance creators reached what has been termed an "historic compromise" with the industries that commissioned their works. A central part of that compromise was a revision in the "work made for hire" doctrine under which the employer of the actual creator rather than the creator is, in specified circumstances, deemed to be the author and owner of all rights in the work. Freelance creators and industry agreed in 1965 that this doctrine would apply in only two situations: (1) where works are created by formal salaried employees within the scope of their employment, and (2) with respect to commissioned works, where the work falls within one of the statutorily enumerated types of subject matter, *and* both parties expressly acknowledge in writing that the work is to be considered "made for hire." One year later, in a 1966 legislative report, the House Judiciary Committee endorsed the compromise, thereby laying the issue to rest. Ten years later, after numerous other copyright issues had been resolved, Congress included this long-settled compromise in the definitional provisions of the Copyright Act of 1976.

Consistent with the compromise, the Act's provisions establish a bifurcated definition of "work made for hire." 17 U.S.C. § 101. Subsection (1) of the definition provides that a work for hire is a work prepared by an "employee" in the course of his or her employment. Subsection (2) authorizes nine enumerated categories of

works created on "special order or commission" which may be works for hire, but only if the parties expressly agree in writing that the work shall be considered "made for hire." The two provisions are intended to be mutually exclusive: subsection (1) is limited to formal, salaried employees; subsection (2) is the sole mechanism through which commissioned works, created outside the salaried employment relationship, are to be treated as works for hire.

Congress did not define the term "employee" in subsection (1) because when the 1965 compromise was struck, all the participants in the copyright revision process had the same understanding of that term and, therefore, believed a statutory definition was unnecessary. Consistent with the case law that had developed at that time under the 1909 Act's conclusory reference to work for hire, the Copyright Office, the affected industries and creators *all* understood that an "employee" for work for hire purposes was a person who was paid a regular salary and received other employment benefits. This understanding was based on the belief that an "employee" could fairly be presumed to have given up all authorship and copyright rights in works produced in the course of formal employment in exchange for a regular salary and other employment benefits, and the assumption by the employer of all of the risks associated with creation and distribution. No one involved in the copyright revision process, including those few publishers which have filed a brief *amici curiae* in support of petitioners, expressed the belief that this presumption could be invoked with respect to works created by freelance artists.

Petitioners, supported by numerous parties that routinely commission freelance work, now seek to rewrite the 1965 compromise on work for hire. Recognizing that the sculpture created by respondent James Earl Reid cannot qualify as a work for hire under subsection (2), petitioners propose to convert him into an "employee" under subsection (1). Under petitioners' inter-

pretation, a freelance creator—even one like Reid who volunteers his services—automatically loses all rights in the work if the commissioning party exercises what a court *later* deems to be a sufficient amount of supervision and control over the freelancer's labors, a test that can almost always be met given the hiring party's initiation of the project and right to reject a work as unsatisfactory.

This interpretation twists the 1976 definition of work for hire beyond recognition. It cannot be reconciled with the language, structure, and purpose of subsections (1) and (2), which deliberately distinguish between the works of formal salaried employees and "specially ordered or commissioned" works. Petitioners' interpretation is also contrary to the extensive legislative history of that definition, which, following the clear language of the statute, shows that subsection (2) was carefully crafted as the *exclusive* provision under which freelance works could qualify as works for hire, and that the reference to "employee" in subsection (1) was confined to formal, salaried employment.

Nothing in the legislative history reveals any intent to adopt petitioners' "supervision and control" test to transmogrify a freelance creator into an "employee." Indeed, as the courts below have observed, actual supervision and control is irrelevant to formal, salaried employment. It is also irrelevant where a work admittedly qualifies as made for hire under subsection (2). Thus, petitioners in effect propose judicial rewriting of the statute by application of a test that is irrelevant to its purpose.

In doing so, petitioners rely on case law that developed under the old (and much different) copyright statute and that was handed down only *after* the 1965 historic work for hire compromise was reached (but before it was ultimately enacted by Congress in the 1976 omnibus revision). The crafters of the 1965 compromise could not have intended to adopt this *subsequent* case law. Petitioners' central argument—that Congress intended to import post-1965 case law into subsection (1) of the work for hire definition—rests on their contention that congressional silence with respect to that case law should be construed as an intent to adopt it. That presumption is questionable at best where Congress continues prior law without substantial change; it is totally without merit where Congress rewrites the entire Act including the statutory definition at issue.

By enacting the 1965 compromise, Congress codified the accommodations won by industry. The Act provides that contributions to collective works, supplementary works and motion pictures, among others, are eligible for work for hire treatment, provided the written consent of the creator is obtained. In addition, creators of works for hire do not have access to the reversionary rights normally exercisable thirty-five years after a transfer of copyright rights. Industry secured these concessions by agreeing that they would be conditioned upon securing the requisite written agreement from the freelance creator. Petitioners now are attempting to obtain a judicial revision of the bargain which will preserve the accommodations they won, while reclaiming the concessions they made.

Contrary to the assertions of publishers and other commissioning parties supporting the petitioners, the Court of Appeals decision in this case is fully consistent with the fundamental purposes of the Copyright Act. Even if a commissioned work is not included in the subsection (2) categories and thus is statutorily ineligible to be a work for hire, publishers and other commissioning parties can acquire all the rights they need simply by obtaining a written assignment of copyright. Of course, freelance creators may insist on fair compensation for transferring the rights that petitioners' *amici* claim are so desperately needed to bring the work to the public. And creators can exercise their statutory right of reversion thirty-five years after the assignment is executed. But these rights properly belong to creators under the Copyright Act. Preserving these rights comports fully with

a central purpose of the Act—to reward creators. The Constitution, after all, speaks of "Authors and Inventors," not purveyors. U.S. Const., art. I, § 8.

While ASMP and the CJC agree with the result reached by the court below, the court's analysis was flawed to the extent that it held that recourse to the Restatement of Agency is appropriate in determining whether a freelance creator is an "employee" under subsection (1). Adoption of the Restatement standard has no basis in the language or legislative history of the 1976 Copyright Act. The legislative history of the Act shows that the term "employee" was deliberately limited to those working in a formal, salaried relationship. The court below erred in adopting a test for employment that Congress never endorsed and that would require consideration of a factor—the power to supervise and control—that Congress meant to abandon.

The interpretation of the statute advanced by ASMP and the CJC was recently adopted by the Ninth Circuit in *Dumas v. Gommerman*, No. 87-6542 (9th Cir. January 13, 1989). In an opinion written by Judge Fletcher, the Ninth Circuit undertook an intensive examination of the legislative history of the work for hire definition and concluded that subsection (1) applies only to formal, salaried employees. The court further held that the agency law principles adopted by the Fifth and District of Columbia Circuits to decide who is an "employee" under subsection (1) were inconsistent with congressional intent to establish a "bright line" between employees and independent contractors. Consistent with the arguments presented in this brief, the Ninth Circuit ruled that commissioned works are works for hire under the 1976 Act only if the requirements specified in subsection (2) of the work for hire definition are satisfied. That conclusion, and the analysis supporting it, restore to freelance creators the ability to retain and to profit from the authorship and copyright rights in their own works as intended by Congress when it enacted the 1976 Act. ASMP and

CJC therefore urge this Court to adopt the Ninth Circuit's construction of the Act.

ARGUMENT

I. SUBSECTION (2) IS THE EXCLUSIVE PROVISION FOR DETERMINING WHETHER COMMISSIONED WORKS QUALIFY AS "WORKS MADE FOR HIRE"

The definition of "work made for hire," enacted as part of the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*, establishes two alternative and mutually exclusive standards for determining whether copyrightable works should be considered works for hire. First, the definition provides that a work prepared by "an employee within the scope of his or her employment" is a work for hire. 17 U.S.C. § 101 (subsection (1) of definition of "work made for hire"). No agreement, in writing or otherwise, is required. Instead, the mere nature of the relationship between the employer and employee is deemed sufficient to confer work for hire status upon all works prepared in the course of the employee's employment.

Second, the statute adopts a very different approach with respect to works created "on special order or commission." 17 U.S.C. § 101 (subsection (2) of definition). That approach was the outcome of an "historic compromise" between publishers and authors. *See* W. Patry, *Latman's The Copyright Law* 121 (6th ed. 1986) ("Patry, *Copyright Law*"). The essential elements of that compromise were in place in 1965, were endorsed by the House Judiciary Committee in 1966, and were adopted ten years later as part of the 1976 Copyright Act. Under that compromise, only commissioned works falling within enumerated types of subject matter were deemed eligible for work for hire status, and only when the artists who created them agreed in writing that their works would be considered "made for hire."[2] For all

[2] While subsection (2) does not expressly require a work for hire agreement to be signed before commencement of the project, the drafters of the compromise viewed that requirement as implicit in the provision. Participants in the copyright revision

other types of commissioned works, the commissioning party was left free to obtain all rights by transfer from the artist. This structure confirms that Congress intended subsection (2) to be the exclusive means for determining whether works created on special order or commission should be treated as works for hire.

Petitioner's argument that subsection (1) should be interpreted also to incorporate works created by independent contractors is contrary to the language, structure and purpose of the statute. The definition explicitly distinguishes between works prepared by employees within the scope of their employment and works created pursuant to a "special order or commission."[3] If Congress had intended subsection (1) to cover independent contractors it would have specifically so provided, rather than referring only to "employees." Moreover, Congress clearly showed its intent to make subsections (1) and

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process understood that work is not created "on special order or commission" under subsection (2) unless the contract itself is signed before initiation of the project. *See* Copyright Law Revision, Part 5, 1964 Revision Bill With Discussion and Comments 145 (Comm. Print 1965) (statement by Barbara Ringer) ("1964 Revision Bill"). As the unfortunate experiences of photographers and other creators have shown, avoidance of this requirement by commissioning parties subverts the whole purpose of the writing criterion, which is to allow creators to make a free and independent decision whether to agree to a work for hire arrangement. *See* 134 Cong. Rec. S14560 (daily ed. Oct. 5, 1988) (remarks of Sen. Cochran giving example of commissioning party stamping work for hire agreement on back of check, thus requiring creator to sign the agreement as the condition for getting paid for work already completed).

[3] The phrase "specially ordered or commissioned" is not defined in the 1976 Act. Under the ordinary meaning of that phrase in the industry, a work is specially ordered or commissioned when an artist is retained in advance for a specific project to be prepared in accordance with the commissioning party's specifications. Respondent's sculpture, as well as many of the works created by freelance creators, fits this definition.

(2) mutually exclusive by using the word "or" in separating the two subsections.[4]

Congress did not intend courts to determine first whether a commissioned work meets the criteria set forth in subsection (2), and then, assuming the criteria are not met, ascertain whether the commissioning party exercised a sufficient amount of supervision and control to render it an "employee" work for hire under subsection (1). This strained and illogical approach to the statute, which is reflected in the decision of the Second Circuit in *Aldon Accessories v. Spiegel*, 738 F.2d 548 (2d Cir.), *cert. denied*, 469 U.S. 982 (1984), and in briefs filed by petitioners and *amici* supporting them in this case, cannot be reconciled with the language and structure of the 1976 definition of work for hire. Nor, as the discussion below shows, is this approach compatible with the legislative history of that definition.

II. THE LEGISLATIVE HISTORY OF THE 1976 DEFINITION OF WORK FOR HIRE DEMONSTRATES THAT COMMISSIONED WORKS CREATED OUTSIDE THE TRADITIONAL FORMAL EMPLOYMENT RELATIONSHIP QUALIFY AS WORKS FOR HIRE ONLY IF THE CRITERIA SET FORTH IN SUBSECTION (2) ARE SATISIFIED

Petitioners' argument that Congress intended to establish supervision and control as the controlling standard for determining work for hire eligibility of commissioned works finds absolutely no support in the legislative history of the 1976 Act. Petitioners have not cited, because none exists, a single statement in a legislative report, a single reference in a Copyright Office revision study, or a single

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[4] Petitioners' argument also renders meaningless the clause "scope of employment" in subsection (1). Under their approach, all works created by independent contractors that are supervised and controlled are automatically within their "scope of employment." Congress obviously intended otherwise.

comment in 14 years of hearings, that indicates such an intent. On the contrary, the substantial relevant legislative history, reviewed by the Ninth Circuit in *Dumas v. Gommerman*, supports the result urged here by ASMP and CJC. In the face of that history, petitioners' analysis distorts the stages in the development of the 1976 work for hire definition and obscures the statute's clear meaning. A complete analysis of the development of the work for hire definition, against the backdrop of the 1900 Copyright Act, demonstrates the error in petitioners' reasoning.

A. Congress Intended Work for Hire Under the 1909 Act To Be Limited to the Formal Employment Relationship

The work for hire concept had its genesis in the common law before its first codification in the Copyright Act of 1909. 17 U.S.C. § 1 *et seq.* (1970) (repealed 1976), Ch. 320, 35 Stat. 1025 (the "1909 Act"). In two early cases, the courts recognized that the copyrightable fruits of an employee's labors should belong to the employer. *See Colliery Eng. Co. v. United Corresp. Schools Co.*, 94 F. 152 (C.C.S.D.N.Y. 1899); *Little v. Gould*, 15 F.Cas. 612 (C.C.N.D.N.Y. 1852) (No. 8395). Both courts reached this commonsense result in traditional employment contexts that justified divestment of the employee's copyright rights in light of the benefits accorded him. The same was true in *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903), the only other case in which this Court has addressed the work for hire issue. In that case, the Court found that the copyrights in certain advertising lithographs belonged to the employers of the designers of those works because the works were produced "by persons employed and paid by the plaintiffs in their establishments to make those very things." *Id.* at 248 (citations omitted). The recitation of facts in the lower court opinion shows that the employer and designer in that case enjoyed a traditional employment

relationship. *See Courier Lithographing Co. v. Donaldson Lithographing Co.*, 104 F. 993 (C.C.A.Ky. 1900).

When Congress codified the work for hire doctrine in the 1909 Act, it did so by defining "author" to include the "employer in the case of works made for hire." 17 U.S.C. § 26 (1970) (repealed 1976). The legislative history of the 1909 Act shows that the reference to "employer" in section 26 was intended to apply narrowly to publishers of encylopedias and other so-called "composite works." *See* Ringer, *Renewal of Copyright*, Copyright Office Study No. 31, 86th Cong., 2d Sess. 139 (Comm. Print 1960).

The statute as ultimately drafted was, inadvertently, not so limited, an error that, understandably, led the courts to construe the provision to apply to works of formal salaried employees outside of the composite work context. *See, e.g., U.S. Ozone Co. v. U.S. Ozone Co. of America*, 62 F.2d 881 (7th Cir. 1932). Significantly, however, until 1966 section 26 was *not* applied to works of independent contractors *See Brattleboro Publishing Co. v. Winmill Publishing Corp.*, 369 F.2d 565 (2d Cir. 1966). Examining the case law construing section 26 over the preceding forty years, Borge Varmer, in an important study on work for hire prepared for the Copyright Office in 1958 in connection with the effort to revise the 1909 Act, concluded that section 26 of the 1909 Act was limited to salaried employees:

> The statutory concept of employment for work for hire is based on the specific contractual relationship between employer and employee. The courts have not given a definition of that relationship which will cover all situations that may come up, but all the cases have involved salaried employees who received either a fixed salary or a minimum salary plus commission. . . . Hence, it may be concluded that section 26 refers only to works made by salaried employees in the regular course of their employment. Varmer,

Works for Hire and On Commission, Copyright Office Study No. 13, 86th Cong., 2d Sess. 130 (Comm. Print 1960) ("Varmer, *Works for Hire*").[5]

Unpublished works generally were not subject to federal protection and instead were protected by the states, which applied common law presumptions in determining ownership of copyrighted works. Decisions involving unpublished works had not considered them to be works for hire, but had instead treated them as involving an implied transfer of rights from the creator to the commissioning party. *See Yardley v. Houghton Mifflin Co.*, 108 F.2d 28, 31 (2d Cir. 1939), *cert. denied*, 309 U.S. 686 (1940). It was against the background of this narrow application of the work for hire doctrine that Congress embarked upon its effort to define work for hire in the 1976 Act.

B. The 1976 Act Retained the Traditional Concept of "Employee" in Subsection (1) and Established Subsection (2) as the Exclusive and Limited Authorization for Work for Hire Treatment of Commissioned Works

The 1976 Copyright Act completely revised the 1909 Act. It represented the culmination of years of study by the Copyright Office and was the result of many congressional attempts to restructure what everyone considered to be an antiquated statute. *See generally* Patry, *Copyright Law* 118-120.

The most significant innovation introduced by the 1976 Act was a unified statutory copyright law. In Section

[5] Petitioners' citations to Varmer's study are disingenuously selective. On page 21 of their brief they cite the study in support of their argument that supervision and control has always been the dividing line between employees and independent contractors. Pet. Br. at 21. Buried in a footnote six pages later, in a different context, is a fleeting reference to Varmer's *contrary* conclusion: that the determining factor was whether the work was created by "salaried employees in the regular course of their employment." *Id.* at 27 n. 10.

301(a), which provides for the preemption of common law copyright, Congress eliminated all common law rules and presumptions that had determined whether commissioned works were owned by the creators or by the parties that commissioned them. 17 U.S.C. § 301(a). In their place, Congress established new specific guidelines in the 1976 Act's definition of "work made for hire."

The legislative history of much of the 1976 Act, especially its work for hire provisions, is unusual both because the critical developments in the statutory language occurred long before the legislation became law in 1976, and because of the extensive participation of the private sector and the Copyright Office in drafting the Act.[6] An understanding of the negotiations between the private sector and the Copyright Office occurring between 1958 and 1965 thus is essential to ascertaining the legislative purpose underlying the 1976 definition of work for hire.

In the late 1950s, Congress appropriated funds for the Copyright Office to undertake a comprehensive program of research and study designed to produce draft legislation. Thirty-five monographs covering every significant

[6] *See Mills Music, Inc. v. Snyder*, 469 U.S. 153, 182 n. 6 (1985) (White, J. dissenting): "[T]he Copyright Act is unusual in that much of it . . . was drafted by the Copyright Office, which is itself an arm of Congress"; *Dumas v. Gommerman*, 1989 U.S. App. LEXIS 281, 9 ("Much of the Act can be seen as a virtual contract between creators and marketers of copyrighted materials. Many of the Act's provisions have considerable impact on these two interest groups without any broader effect beyond. The work for hire provisions are in this mold. In interpreting them, we are properly concerned with what the private interest groups, the negotiators, thought the terms meant when they negotiated and agreed to them. Congress' intent clearly was to embody in the Act the negotiated compromises. We must be careful not to distort the bargain reached after so many years of negotiation and compromise").

area of copyright law were written, and their conclusions were reflected in the 1961 Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law, 87th Cong., 1st Sess. (Comm. Print 1961) ("Register's Report"). As noted above, Study No. 13, by Borge Varmer, concluded that works created on special order or commission were not treated as works for hire under the federal act.

1. *The 1961 Report of the Register*

One of the questions posed by Varmer's work for hire study was: "[s]hould the [revised copyright] statute treat commissioned works in the same manner as works made by employees?" Varmer, *Works for Hire*, at 143. The answer of the Copyright Office, contained in the Register's Report, was a resounding no. The Register's Report acknowledged that the conclusory reference to work for hire in the 1909 Act "has been criticized as being inexact because it might be thought to include works made on special commission." Register's Report, at 87. The Report noted, however, that as of that date, "[t]he courts . . . have not generally regarded commissioned works as 'made for hire'." *Id.* To close any loophole that could ultimately allow commissioned works to be classified as works for hire, the Register recommended that the term be defined as "works created by an employee within the regular scope of his employment." *Id.* at 87.

2. *The 1963 Preliminary Draft Bill*

The 1963 Preliminary Draft bill adopted the Register's recommendation by explicitly stating that "[i]n the case of a work made for hire, the employer shall, for purposes of this title, be considered the author and shall have all the rights comprised in the copyright unless the parties have expressly agreed otherwise." Copyright Law Revision, Part 3, Preliminary Draft for Revised U.S. Copyright Law and Discussions and Comments on

the Draft, 88th Cong., 2d Sess. 15 (Comm. Print 1964) (quoting section 14) ("Preliminary Draft"). In a footnote to that provision, the Preliminary Draft stated that "[a] 'work made for hire' would be defined elsewhere in the statute as a work prepared by an employee within the scope of the duties of his employment, *but not including a work made on special order or commission.*" *Id.* at 15 n. 11 (emphasis added).

This language unmistakably shows that the Preliminary Draft sharply distinguished between employees and independent contractors. The Draft's reference to "employee" (which eventually became subsection (1) of the 1976 definition of work for hire) was understood by all concerned—even the publishing interests which would have been the principal beneficiaries of an expanded work for hire doctrine—to refer only to a salaried employee and not to an independent contractor retained on the basis of a special order or commission. A contemporaneous statement by the American Book Publishers Council and the American Textbook Publishers Institute noted their agreement that "[w]orks for hire—in which copyright is by law owned by the employer—would be redefined to *include only work done by a salaried employee in the scope of his regular duties*, and would exclude works made on special order or commission." Patry, *Copyright Law*, 120 n. 28, *quoting* Copyright Law Revision, Part 4, Further Discussions and Comments on Preliminary Draft for Revised U.S. Copyright Law, 88th Cong., 2d Sess. 250 (Comm. Print 1964) ("Further Discussions on Draft") (emphasis added).[7]

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[7] Horace S. Manges, who served as counsel for the American Book Publishers Council and the American Textbook Publishers Institute, claimed that the exclusion of commissioned works from the work for hire definition would discourage publishers from using freelancers. Preliminary Draft at 259. Manges recognized that in order for freelancers to be considered employees, "[t]here would be the necessity of putting people on the payroll whom the employers wouldn't want to put on the payroll." *Id.* E. Gabriel Perle,

3. *The 1964 Revision Bill*

The work for hire definition was somewhat modified in the 1964 Revision Bill as a result of other changes proposed by the Preliminary Draft. Federal statutory

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representing Time, Inc., was more explicit in warning that comptrollers and accountants in the publishing industry "start going into a real tailspin the minute they start seeing the word 'employee,' because this means social security, withholding, and all the other attendant mechanical housekeeping tasks." *Id.* at 267. It is apparent, therefore, that the publishing interests that now urge an expansive interpretation of an "employee" work for hire had a different, and far more narrow, understanding of the term at the time the work for hire definition was crafted. Mr. Perle, who obviously was well aware that "employee" connoted a salaried employment relationship, now has signed the *amici curiae* brief of the Magazine Publishers of America, which attempts once more to secure a more expansive reading of the statute than Congress intended.

Mr. Perle also testified before Congress in 1982 before the erroneous expansion of work for hire by the Second Circuit's *Aldon* decision. In contrast to the arguments made in the magazine publishers' brief, Mr. Perle submitted a statement on their behalf conceding that "use of the phrase 'work made for hire' does not make the writer a 'hireling' or 'employee,'" and that "[c]lause 2 of the definition . . . clearly applies to an independent contractor situation." *Hearings Before the Senate Comm. on the Judiciary on S. 2044*, 97th Cong., 2d Sess. 60 (1982) (*"1982 Hearings"*). Mr. Perle's 1982 testimony further belies the magazine publishers' claim that acquisition of all rights under work for hire is indispensable to them: "I submit that magazine publishers rarely use the work made for hire approach. They do not very often need those rights." *Id.* at 50.

Petitioners' reference to testimony by ASMP and the Graphic Artists Guild during the 1982 hearings is misleading. Pet. Br. 41 n. 20. The testimony was submitted in support of a legislative proposal to make explicit what Congress intended in 1976: that a work for hire under subsection (1) can only be a work created by a salaried employee within the scope of his employment. *1982 Hearings* at 41-42. The artists' testimony invoked "common law standards" only to show that courts mistakenly applying those standards to define "employee" were causing "great uncertainty." *Id.* at 41.

protection of copyright had attached under the 1909 Act only upon publication of the work. Before publication, state common law copyright rules governed. In a dramatic departure from this dual scheme, the Preliminary Draft proposed a unified federal statutory system for copyright protection in all tangibly fixed works, regardless of whether they were published. Preliminary Draft at 18 (§ 19). At the same time, the Preliminary Draft recommended that creators be vested by statute with a right of "reversion" in any copyright that was transferred to another party. *Id.* at 15-16 (§ 16). *See* 17 U.S.C. § 203(a)(3).[8]

The combined effect of these two proposed changes prompted publishers to reevaluate the consequences of excluding commissioned works from the definition of work for hire.[9] The common law presumption that commissioning parties owned the copyright in works created on commission under an implied transfer would no longer be available to publishers. Moreover, the reversionary right would allow creators to reclaim any assignment of copyright rights and thereby cut off revenues to the publisher after a number of years.

Fearing that the reversionary right would cause "major economic dislocation" in their industry, publishers

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[8] As the 1976 House Report explained, section 203 was "a provision safeguarding authors against unremunerative transfers." H.R. Rep. No. 1476, 94th Cong., 2d Sess. 124 (1976) ("1976 House Rep."). This protection was needed "because of the unequal bargaining position of authors, resulting in part from the impossibility of determining a work's value until it has been exploited." *Id.*

[9] One publisher representative commented that these changes were "so completely prejudicial" that the publishing industry would have to reexamine its willingness to support other aspects of the Preliminary Draft, such as the establishment of a new copyright term lasting the life of the author plus 50 years. Further Discussions on Draft, at 34. *See also* Hardy, *Copyright Law's Concept of Employment—What Congress Really Intended*, 35 J. Copyr. Soc. U.S.A. 236 (1988).

urged that the definition of work for hire be retained intact insofar as it referred to "employees," but that it be expanded to incorporate commissioned works, without regard to the subject matter, "if the parties so agree in writing." Further Discussions on Draft at 274 (joint statement of the American Book Publishers Council and the American Textbook Publishers Institute). This suggestion, along with another publisher recommendation that the reversionary right commence after 35 years instead of 25, was incorporated into various bills introduced in Congress in 1964. 1964 Revision Bill 10 (§ 16 (a)(1)), 31 (§ 54).

Representatives of creators' interests strenuously objected that the publishers' proposal effectively would nullify the reversionary right, which under the terms of the 1964 Bill was inapplicable to works for hire. Irwin Karp, representing the Authors League of America,[10] claimed that publishers would use their superior bargaining position to force authors to sign work for hire agreements, thereby relinquishing *all* of their copyright rights, simply as a condition of getting their books published. 1964 Revision Bill at 239. Mr. Karp urged that the 1964 Revision Bill return to the Preliminary Draft's proposal that works made "on special order or commission" be excluded from the definition of work for hire. *Id.* at 239, 245.

4. *The 1965 Compromise*

This conflict between creators and publishers was resolved in 1965. The compromise negotiated by the parties was included in the 1965 revision bill and is in substance

[10] The Authors League took the lead in representing creators' interests in the copyright revision process. The Authors Guild, which is part of The Authors League, is a member of The Copyright Justice Coalition. Mr. Karp, who retired just last year from representing The Authors League, has together with Barbara Ringer submitted an *amicus curiae* brief on behalf of the Volunteer Lawyers for the Arts in support of respondent.

what Congress enacted in 1976. This compromise, outlined in a joint memorandum submitted to Congress and the Copyright Office,[11] entailed agreement both on the work for hire question and on whether creators of works other than works for hire would be entitled to reversionary rights in transferred copyrights. In exchange for the publishers' agreement to accept the reversionary right, creators consented to allow four categories of commissioned works to be works for hire if the parties expressly so agreed in writing.[12] The Register's Supplementary Report specifically noted that the identification of "four special cases" of commissioned works was intended to exclude all others both from new subsection (2) *and* old subsection (1): "Other works made on special order or commission would not come within the definition [of work for hire]." Copyright Law Revision, Part 6, Supplementary Report of the Register of Copyrights On the General Revision of the U.S. Copyright Law: 1965 Revision Bill, 67-68 (Comm. Print 1965).

[11] *See Copyright Law Revision: Hearings on H.R. 4347 et al. Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Judiciary Comm.*, 89th Cong., 1st Sess. 134 (1965). The parties to the joint memorandum included the major competing interests involved in the copyright revision process: The American Book Publishers Council, Inc.; American Guild of Authors & Composers; American Society of Composers, Authors and Publishers; American Textbook Publishers Institute; The Authors League of America, Inc.; Composers and Lyricists Guild of America, Inc.; Music Publishers Protective Association, Inc.; and Music Publishers Association of the United States.

[12] The compromise definition of work for hire added a new subsection (2) that provided that:

> (2) a work specially ordered or commissioned for use as a contribution to a collective work, as part of a motion picture, as a translation, or as a supplementary work, if the parties expressly agree in writing that the work shall be considered a work made for hire.

See Patry, *Copyright Law* 121, *citing* S. 1006, H.R. 4347, H.R. 5680, H.R. 6831, H.R. 6835, 89th Cong., 1st Sess. § 101 (1965) (definition of work made for hire).

This exclusion was the "quid pro quo" for allowing certain types of commissioned works to be eligible for work for hire status if the writing requirement was satisfied. *See* Patry, *Copyright Law* 121. Subsequent negotiations expanded, by agreement of the affected interests, the enumerated categories of commissioned works referenced in subsection (2) to include compilations, instructional texts, tests, and atlases. The structure of the provision and its purpose, however, remained intact. The final compromise was endorsed by Congress in the first legislative report on the revision bills. *See* H.R. Rep. No. 2237, 89th Cong., 2d Sess. 116 (1966) ("After full consideration the committee has decided to incorporate the substance and much of the language of this compromise in the bill.")

This background clearly shows the process that resulted in the definition of works for hire in the 1976 Act and demonstrates the fundamental distinction established between works produced in the employment context and those prepared on commission. Both the House and Senate Reports accompanying the Act confirm this distinction by stating that "[t]he definition now provided by the bill represents a compromise which, in effect, spells out those *specific categories of commissioned works* that can be considered 'works made for hire' under *certain circumstances*." S. Rep. No. 473, 94th Cong., 1st Sess. 105 (1975); 1976 House Rep. at 121 (emphasis added).[13]

There is absolutely no indication that Congress or any affected interest involved in the revision of the copyright

[13] *See also Dumas*, 1989 U.S. App. LEXIS 281, p. 11: "Thus, in the package as finally approved, works for hire would not be subject to the artist's right to terminate transfers. In exchange, the old tests under the 1909 Act, which favored employers, would be replaced by a new definition. . . . Commissioned works . . . were to be treated as works for hire only if they fell within specific enumerated categories, and even then only if there was an agreement in writing that the work was a work for hire."

law thought that a commissioned work that failed to meet the subsection (2) criteria could nonetheless be treated as an "employee" work for hire under subsection (1). Neither the 1976 House and 1975 Senate reports, nor the events leading up to the 1965 compromise, provide any evidence to support petitioners' theory.

III. THE "SUPERVISION AND CONTROL" STANDARD HAS NO SINGLE UNDERSTANDABLE MEANING, WAS NEVER ADOPTED BY CONGRESS, AND WOULD LEAD TO UNPREDICTABLE AND UNFAIR RESULTS

Petitioners and their *amici curiae* urge this Court to adopt a supervision and control standard for distinguishing between an "employee" work for hire under subsection (1) and a commissioned work for hire under subsection (2). Pet. Br. 30. Under their theory, only those independent contractors who are insufficiently supervised and controlled are covered by subsection (2); regular employees and independent contractors who are adequately supervised and controlled are classified as "employees" under subsection (1). Adoption of this theory would be erroneous for several reasons.

First, the cases decided between 1966 and 1976 that applied a supervision and control test to commissioned works of freelance creators were not considered during the compromise process described above. Those cases were superseded by the 1976 Act. The interpretation of work for hire reflected in those cases is simply irrelevant to what the law is now. Moreover, cases that have applied the supervision and control standard after the 1976 Act went into effect are wrongly decided. *See, e.g., Evans Newton Inc. v. Chicago Systems Software*, 793 F.2d 889 (7th Cir.), *cert. denied*, 479 U.S. 949 (1986). In finding that a work for hire arrangement arises whenever the commissioning party has the power to supervise and control the creator's work, or has exer-

cised that power sufficient to meet an undefined subjective standard, those courts effectively have made virtually every commissioned work a work for hire—a result that is directly contrary to the purpose of the statute and the intent reflected in the legislative history.

Petitioners' only basis for inferring that Congress intended to adopt post-1966 formulations of the supervision and control standard is the absence of any reference to that case law in the committee reports prepared and floor discussions occurring in 1976.[14] As discussed above, however, the legislative history before the post-1966 case law shows an affirmative intent to confine "employee" under subsection (1) to salaried employees and not to extend an employment test to commissioned works. There was no need for Congress to discuss the intervening case law that was inconsistent with that intent, since Congress was enacting a compromise agreed to ten years earlier. Even if Congress was aware of those cases, they did not change the deal that had earlier been struck.

As this Court has recognized, reliance on congressional silence concerning preceding case law as evidence of affirmative intent is at best a questionable proposition. *See Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 336 n. 15 (1971). Such reliance has occasionally been deemed appropriate where Congress is continuing the same statutory scheme that the courts had been interpreting. *Herman & MacLean v. Huddleston*, 459 U.S. 375, 384-85 (1983). But where, as here, Congress revamps the entire statutory scheme and enacts a definition of a key phrase that never before existed in the statute, congressional silence cannot be accorded the

[14] This congressional silence was the basis for the Second Circuit's adoption of pre-1976 case law in *Aldon*. *See Aldon Accessories*, 738 F.2d at 552.

weight that petitioners' give it. *See General Motors Corp. v. Devex Corp.*, 461 U.S. 648, 653 (1983).[15]

Second, the supervision and control standard produces completely unpredictable results and has been correctly criticized on this ground by both the Fifth and Ninth Circuits. *See Easter Seal Society v. Playboy Enterprises*, 815 F.2d at 331-34 (5th Cir. 1988); *Dumas v. Gommerman*, 1989 U.S. App. LEXIS 281, 15-16. Some courts have held that a work for hire is created whenever the work was produced "at the instance and expense" of the putative employer, or when the employer was the "motivating factor" in inducing the creation of the work. *Brattleboro*, 369 F.2d at 567; *Picture Music, Inc. v. Bourne*, 457 F.2d 1213, 1216-17 (2d Cir.), *cert. denied*, 409 U.S. 997 (1972); *Siegel v. National Periodical Publications*, 508 F.2d 909, 914 (2d Cir. 1974). This formulation of the test is so broad that it sweeps up virtually any work created on commission, since almost by definition a commissioned work is created "at the instance and expense" of the commissioning party. Other courts have employed the equally useless formulation of finding a work for hire arrangement whenever the commissioning party has the power to supervise and control the creator's work. *See, e.g., Murray v. Gelderman*, 566 F.2d 1307 (5th Cir. 1978); *Town of Clarkstown v. Reeder*, 566 F. Supp. 137 (S.D.N.Y. 1983). Still other courts have focused on the degree to which the commis-

[15] Moreover, there is a simple explanation for Congress' silence, as noted by the Ninth Circuit in *Dumas*: "The compromise referred to by the [1976] House Report was reached in 1965 as the product of hard-fought negotiations, and was drafted ten years before passage. 'It is therefore not surprising that the early legislative history omits mention of any change in the meaning of the term 'employee,' although plenty of discussion indicates that everyone involved understood the term to mean someone working for an employer in a salaried job, and understood the term to exclude freelance workers completely." 1989 U.S. App. LEXIS 281, 8, *quoting* Litman, *Copyright, Compromise, and Legislative History*, 72 Cornell L. Rev. 857, 901 (1987).

sioning party actually exercised the power of supervision and control. *See, e.g., Aldon,* 738 F.2d at 552. Since the amount of supervision and control necessary to convert a creator into an "employee" is inevitably a subjective judgment based upon the facts of each case, the work for hire determinations made in these cases vary widely and are not easily reconciled. In fact, even for those courts purporting to apply a standard of actual supervision and control, there is no single understanding of what that standard means.

Third, petitioners and their *amici* blatantly misstate the way the courts have used the supervision and control standard. Petitioners incorrectly assert that the standard has been used to distinguish between alleged specially ordered "employee" works for hire and "non-employee" commissioned works. *See* Pet. Br. at 30. Courts applying the actual supervision and control test have instead used it only to determine whether a work is a work for hire. There is simply no support in the case law for using that standard in the manner alleged by petitioners, and it is telling indeed that petitioners cannot cite *any* support in the 10-year legislative history of the Act for this novel construction.

Fourth, the interpretation advanced by petitioners and *amici* suffers from a logical inconsistency. Petitioners and *amici* appear to assume that employers of regular, salaried employees do not have to meet the supervision and control standard in order to claim the benefits of subsection (1). The courts have so held. *See Easter Seal,* 815 F.2d at 334 ("the contrary result would be almost unimaginable. . . ."). Similarly, petitioners acknowledge that supervision and control is not relevant to works qualifying under subsection (2). Pet. Br. at 30. It can fairly be asked, then, where the actual supervision and control test can be found in the language or legislative history of the statute. If petitioners and *amici* mean to suggest that publishers and corporations *must* exercise a

substantial amount of supervision and control over the work of their staff employees to claim the benefit of the presumption in subsection (1), many works heretofore thought to be owned by such employers will be owned by their employees absent an express written assignment of copyright to the employer.

Finally, policy considerations and principles of statutory construction argue strongly against adopting a supervision and control standard. Such a standard would lead to the wholesale usurpation of freelance creators' rights without their written consent as contemplated by the Act. Moreover, that standard would in effect punish the freelance creator who interacts closely with a commissioning party and thereby risks *post hoc* forfeiture of all his rights. *See, e.g., Peregrine v. Lauren Corporation,* 601 F. Supp. 828 (D. Colo. 1985). The supervision and control standard also would render subsection (2) meaningless since, according to petitioners, *any* commissioned work can be the work of an "employee" within subsection (1) if actual supervision and control exists.

IV. THE RESTATEMENT OF AGENCY SHOULD NOT BE ADOPTED AS THE STANDARD FOR DETERMINING WHETHER A FREELANCE CREATOR IS AN "EMPLOYEE" UNDER SUBSECTION (1) BECAUSE IT CONFLICTS WITH THE FORMAL, SALARIED EMPLOYMENT THAT CONGRESS ENVISIONED AND BECAUSE IT IS NOT MATERIALLY DIFFERENT FROM THE SUPERVISION AND CONTROL TEST

The Court of Appeals rejected petitioners' argument that a freelance creator should be considered an "employee" under subsection (1) if a substantial amount of supervision and control is exercised over his work. In concluding that Reid was not an "employee," however, the court followed the lead of the Fifth Circuit in applying the factors specified in the Restatement of Agency to the factual circumstance of this case. *Reid,* 846 F.2d at 1494. *See Easter Seal,* 815 F.2d at 335.

Both courts erred in using this analysis because the legislative history compellingly shows that Congress envisioned a formal, salaried employment relationship in enacting subsection (1), not the parameters of an agency relationship. Neither the Fifth Circuit nor the court below has cited any evidence in the legislative history suggesting that Congress endorsed the Restatement test or considered it a valid measure of employment status under the copyright laws.

The Restatement standard is also objectionable because it turns on a "right to control" test that would be as difficult to apply predictably as the actual supervision and control standard. In determining whether a master should be held accountable for (and thus, the beneficiary of) the actions of his servant, the Restatement defines a "servant" in part as one "who with respect to the physical conduct in the performance of the services is subject to the other's control *or right to control*." Restatement of Agency (Second), § 220(1) (emphasis added). Similarly, the first factor listed in Section 220(2) of the Restatement requires consideration of the "extent of control which, by the agreement, the master *may* exercise over the details of the work." *Id.* § 220(2)(a) (emphasis added). Under this test, the right of control alone may be sufficient to render a freelance creator a "servant"; the degree of actual control would be irrelevant.

Despite the fact that the Court of Appeals concluded in this case that the freelance artist was not the "servant" of the party that commissioned his work under the Restatement, there is a substantial risk that many, if not most, freelance creators would find an agency relationship (and thus "employee" status under subsection (1)) unavoidable under that standard.[16] Thus thousands of

[16] Even if freelance creators could show in most cases that they were "engaged in a distinct occupation or business," *id.* § 220(2)(b), that they supplied their own tools and equipment, *id.* § 220(2)(c), or that they were employed only for a brief period of time, *id.* § 220(2)(f), other factors would frequently cut in the other direction. For example, it would be difficult for a freelance photographer to show that photographs taken for a magazine publisher were done without any direction or supervision of the publisher, *id.* § 220(2)(e), or that photography was not part of the regular business of the publisher, *id.* § 220(2)(h).

freelance creators working closely with art directors of publishers and corporations would likely end up losing all rights to their works under the Restatement test. This is directly contrary to the language and purpose of the work for hire definition. Ultimately, the Restatement test would be just as demeaning to creators' rights as the supervision and control standard, with no more support in the statute or legislative history.

In *Dumas*, the Ninth Circuit rejected the approach of the court of appeals below, holding that the drafters of the work for hire definition did not intend to require a work-by-work analysis to resolve ownership disputes:

> Because the work for hire doctrine as finally agreed upon in the compromise effects an implicit transfer of copyright ownership while simultaneously destroying the artist's right to terminate the transfer, the drafters wanted a bright line between employees and independent contractors, so that the parties would not be mistaken in their appraisal of the contracted work's status, and purchasers would have little ability to change the artist's presumed status without the artist being fully aware of the change. 1989 U.S. App. LEXIS 281, 15-16.

In order to provide that bright line, Congress created a clearly bifurcated provision that distinguished between formal salaried employees and certain commissioned works enumerated in the statute, free of the uncertainty introduced by principles of agency law.[17]

[17] Petitioner's objection to the alleged "fractionalization" that would result from classifying commissioned works as "joint works" is not a legitimate reason to adopt the supervision and control test. Pet. Br. 30-32. Congress contemplated that copyright would in certain circumstances be owned by more than one party when it enacted the "joint work" definition. 17 U.S.C. § 101 (definition of

CONCLUSION

For the reasons stated above, the result reached by the court below with respect to work for hire should be affirmed. In so doing, this Court should adopt the reasoning of the Ninth Circuit in *Dumas v. Gommerman* and hold that subsection (1) of the definition of "work made for hire" is limited to formal salaried employees, and that subsection (2) represents the exclusive mechanism for treating commissioned works as works for hire.

Respectfully submitted,

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"joint work"). In many instances, the interpretation of the statute urged here will vest copyright ownership in a single creator rather than multiple contributors. This is especially true where a contributor to the freelancer's work does not meet the basic requirement of copyrightability applicable to all authors. Contrary to a statement in the Court of Appeals opinion suggesting that the contributions of a putative joint author need not be copyrightable, 846 F.2d at 1496, a contributor does not "create" a work—indeed cannot be an author—unless his contribution is fixed in a tangible form of expression. 17 U.S.C. § 101 (definition of "created"). *See* Patry, *Copyright Law*, 116 (citing cases); *Boggs v. Japp*, 9 U.S.P.Q. 2d 1040, 1044 (E.D. Va. 1988). Unless the copyrightability standard is scrupulously applied, the danger exists that any commissioned work created with the involvement of the commissioning party (and which is not the subject of a valid work for hire agreement under subsection (2)) will not be owned by the creator as Congress intended, but rather by the creator and the investor jointly, simply by virtue of the latter's involvement in the project. *See, e.g., Strauss v The Hearst Corp.*, 8 U.S.P.Q. 2d 1832 (S.D.N.Y. 1988).

APPENDIX A

THE COPYRIGHT JUSTICE COALITION

Advertising Photographers of America

Advertising Photographers of America—LA

American Federation of Teachers, AFL-CIO

American Federation of Television and Radio Artists, AFL-CIO

American Society of Journalists and Authors

American Society of Magazine Photographers

Art Directors Club of New York

Art Directors Club of Washington

Artists in Print

Association of Medical Illustrators

Authors Guild of The Authors League of America

Boston Visual Artists Union

Committee of Interns and Residents

Council of Writers Organizations

- Albany Writers Guild
- Aviation/Space Writers Association
- Boating Writers International
- Chicago Women in Publishing
- Dance Critics of America
- Editorial Freelancers Association
- Independent Writers of Chicago
- International Motor Press Association
- Midwest Travel Writers Association

Mystery Writers of America
National Association of Science Writers
National Book Critics Circle
Outdoor Writers Association of America
Philadelphia Writers Association
Romance Writers of America
Science Fiction Writers of America
St. Louis Writers Guild
Travel Journalists Guild
United States Ski Writers Association
Washington Independent Writers
Writers Guild of America East
Foundation for the Community of Artists
Graphic Artists Guild
National Artists Equity Association
National Cartoonists Society
National Writers Union
Pen American Center
Screen Actors Guild, AFL-CIO
Society of Authors Representatives
Society of Illustrators of New York
Songwriters Guild of America
Visual Artists Association
Writers Watch